Southern Container, Inc. *and* Pace, Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 1430,[1] AFL–CIO. Case 3–CA–21430

December 30, 1999

DECISION AND ORDER

BY MEMBERS LIEBMAN, HURTGEN, AND BRAME

On September 2, 1999, Administrative Law Judge Jerry M. Hermele issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel and the Charging Party each filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] and to adopt the recommended Order, as modified and set forth in full below.[4]

ORDER

The National Labor Relations Board orders that the Respondent, Southern Container, Inc., Camillus, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to reduce to writing the terms of the side agreement on breaks orally reached through collective bargaining.

(b) Unilaterally eliminating break periods established by the collectively bargained side agreement.

(c) In any like or related matter interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide the Union with a written side agreement instituting a formal 15-minute break period for the first half of employees' work shifts.

(b) Immediately institute the agreed to policy regarding breaks.

(c) Make employees whole for any loss of earnings and other benefits they have suffered since December 12, 1997, resulting from the refusals to reduce the side agreement to writing and to abide by the side letter.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Camillus, New York, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent since December 12, 1997.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

[1] On January 4, 1999, the United Paperworkers International Union, AFL–CIO, CLC merged with the Oil, Chemical and Atomic Workers International Union. The caption has been amended to reflect that change.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3rd Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Member Brame finds it unnecessary to rely on the judge's finding that the "Respondent's provision of a side letter regarding the Saturday-before-vacation issue following the December 1997 negotiations adds credence to the contention that a similar letter would also have been provided but for the Respondent's reneging."

[3] We agree with the judge that the Respondent's July 1998 unilateral elimination of the break periods for the first part of work shifts violated Sec. 8(a)(5) and (1) of the Act. We do so not based on bad-faith bargaining, as the judge found, but because the break policy had been agreed to in the December 1997 negotiations. Sec. 8(a)(5) and (d) of the Act prohibit an employer who is a party to an existing collectively bargained agreement from modifying the terms and conditions of employment established by that agreement without obtaining the consent of the union. *C & S Industries*, 158 NLRB 454, 457 (1966).

[4] The judge, apparently inadvertently, did not include in the recommended Order an order to cease and desist from failing to reduce to writing the oral terms of the side agreement on breaks that the parties reached through collective bargaining. In this and other respects, we shall modify the recommended Order and the notice to employees to conform to the decision.

[5] If this Order is enforced by a judgment of the United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail and refuse to reduce to writing the terms of the side agreement on breaks orally reached through collective bargaining.

WE WILL NOT eliminate break periods established by the collectively bargained side agreement.

WE WILL NOT in any like or related matter interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide the Union with a written side agreement instituting a formal 15-minute break period for the first half of your work shifts.

WE WILL immediately institute the agreed to policy regarding breaks.

WE WILL make all employees whole for any loss of earnings and other benefits they have suffered since December 12, 1997, resulting from our refusals to reduce the side agreement to writing and to abide by the side letter.

SOUTHERN CONTAINER, INC.

Doren G. Goldstone, Esq., for the General Counsel.
Lawrence I. Milman and *Richard I. Milman, Esqs.*[1] *(Marshall M. Miller Associates, Inc*.), of Lake Success, New York, for the Respondent.
James R. LaVaute and *Jodi P. Goldman, Esqs. (Blitman & King*), of Syracuse, New York, for the Union.

DECISION

I. STATEMENT OF THE CASE

JERRY M. HERMELE, Administrative Law Judge. During December 1997 negotiations over a new collective-bargaining agreement, a dispute arose between the Respondent, Southern Container, Inc. (Southern), and the Union, the United Paperworkers International Union, Local 1430,[2] regarding breaks during the employees' workday. The central issue in this case is whether the Respondent orally promised to give the employees a 15-minute break, the specifics of which would be set forth in a written document ancillary to and following the parties' executed collective-bargaining agreement. In an October 30, 1998 complaint, the General Counsel alleges that the Respondent violated Section 8(a)(1) and (5) of the National Labor Relations Act by failing to provide this written document, and then in July 1998 by unilaterally eliminating the informal and unwritten 15-minute break policy as it existed up until then. The Respondent denied these allegations in a November 4, 1998 answer.

This case was tried on June 14 and 15, 1999, in Syracuse, New York, during which the General Counsel called six witnesses and the Respondent called one witness, its counsel. All parties, including the Union, then filed briefs on August 12, 1999.

II. FINDINGS OF FACT

Since 1984, Southern has owned a plant in Camillus, New York, outside of Syracuse, which manufactures packaging products such as boxes. Southern's purchase of interstate goods at this plant exceeds $50,000 a year. There are approximately 125 employees at that plant, 85 of which are represented by the Union.[3] The employees work in three eight-hour shifts in four departments: corrugator, printing, finishing, and shipping (G.C. Exh. 1(c); Tr. 18, 44, 73).

Mead Container owned the Camillus plant in the early 1980s (Tr. 114). The Mead employees worked an 8-1/2-hour workday, during which they received two 10-minute paid breaks and a 30-minute unpaid lunch. Southern acquired the plant and its entire workforce in 1984, recognized the Union, and negotiated a new contract, whereby the workday was reduced to eight hours with a 20-minute paid lunch and no breaks (Tr. 78, 118, 134, 162, 311, 313–314). During subsequent contract negotiations in 1986, 1989, and 1992, the Union sought unsuccessfully to institute breaks in the workday. So, the 1992 contract, which ran until December 1997 and set forth an eight-hour workday, gave the employees no breaks other than the 20-minute paid lunch (G.C. Exh. 2; Tr. 42–43, 314–318, 326-30).

Notwithstanding the lack of any formal breaks at the plant since 1984, other than lunch, employees took breaks anyway. Indeed, management accommodated the employees with bathroom breaks as long as one employee could get another employee from another department to cover his machine for him (Tr. 81–82, 362). So, most employees generally took two 10-minute breaks and management did not object as long as the Company's President, Steven Grossman, didn't find out (Tr. 16-17, 27–28, 119). But the employees assigned to the corrugator machine, which ran continuously, got no breaks unless one of them was able to relieve the other (Tr. 37, 83).

In 1994, Andrew Schaefer took over as the plant manager and learned that the employees were taking breaks in violation of the 1992 contract (Tr. 16, 26–27). Employees who violated the no-break rule were subject to written warnings for the first two infractions, suspension for the third infraction, and termination for the fourth (Tr.87).[4] No employee was ever suspended or fired, however (Tr. 143–144). In the fall of 1994, Shaefer met with the Union to discuss the break issue, and they agreed to eliminate the de facto policy of the second 10-minute break in the latter half of the employees' shifts. Management and the Union wanted to wait until the 1997 contract negotiations, however, to address the matter of the first break (Tr. 29, 57-58, 125).

[1] Richard I. Milman succeeded his father, Lawrence I. Milman, as counsel in this case once the elder Milman testified as a witness for the Respondent.

[2] In January 1999, the Union's name was changed to the Paper Allied Industrial, Chemical and Energy Workers, International Union (Tr. 72–73, 245–246).

[3] The Teamsters union represents another 25 or so employees (Tr. 18).

[4] It is unclear when this four-step disciplinary policy was enacted.

But on May 23, 1995, Schaefer pressed the break issue again by writing the following letter to the Union:

> JIM AND CURT, ARTICLE FIVE, SECTION ONE OF THE CONTRACT CLEARLY DEFINES THE NORMAL WORK DAY. IT READS, "THE REGULAR WORK DAY SHALL CONSIST OF EIGHT (8) CONSECUTIVE HOURS EXCLUSIVE OF THE LUNCH PERIOD WHICH SHALL BE A TWENTY (20) MINUTE PAID LUNCH."
>
> WHEN I BEGAN LAST FALL IN MY POSITION AT SOUTHERN CONTAINER, IT WAS CLEAR THAT THERE WAS A POOR UNDERSTANDING OF THE HOURS OF WORK. NOT ONLY WAS THE TWENTY MINUTE LUNCH BEING TAKEN, BUT ALSO TWO BREAKS OF APPROXIMATELY TEN MINUTES EACH WERE ALSO BEING TAKEN.
>
> I EXPLAINED TO THE UNION COMMITTEE THAT THIS WAS NOT CORRECT PRACTICE, AND THAT ONLY ONE TWENTY MINUTE BREAK WAS THE RULE. I AGREED TO ALLOW THE MORNING BREAK TO CONTINUE FOR THE TIME BEING TO ACKNOWLEDGE THE POOR PAST PRACTICE OF ALLOWING THE EXTRA TIME, BUT ELIMINATED THE AFTERNOON BREAK, AND CLEARLY POINTED OUT THAT WE WILL NOT GO ON INDEFINITELY WITHOUT ADDRESSING THE OTHER BREAK WHICH IS NOT CONTRACTUAL.
>
> IT IS NOW THE TIME TO ADDRESS THE MORNING BREAK. THIS BREAK WILL BE ELIMINATED AS OF JULY 10TH, 1995, AND WE WILL ADHERE TO THE HOURS OF WORK AS THEY ARE DEFINED IN THE CONTRACT.
>
> WE DO ACKNOWLEDGE, AS WELL AS READILY GRANT "EXTRA" BREAKS DURING THE NORMAL WORK DAY WITH SUPERVISORY APPROVAL. WILL CONTINUE TO BE THE PRACTICE OF SOUTHERN CONTAINER IN CAMILLUS TO DO SO, AS LONG AS WE ARE ABLE TO MAINTAIN THE OPERATION OF OUR BUSINESS DURING THOSE TIMES.
>
> IT IS ESSENTIAL THAT WE ALL UNDERSTAND THE NEED FOR CONTRACT ADHERENCE. THE REASON AND THE SPIRIT OF THE NEGOTIATED AGREEMENT IS TO PROVIDE A SET OF RULES WE BOTH CAN, AND MUST LIVE WITH TO WORK TOGETHER SMOOTHLY. SOMETHING LIKE THE MORNING BREAK MAY SEEM TRIVIAL, BUT IT IS VALUED AT APPROXIMATELY $200,000.00 PER YEAR IN WAGES, AND $1,280,000.00 IN ANNUAL LOST SALES POTENTIAL. IT IS IN THE BEST INTEREST OF THE COMPANY AND THE EMPLOYEES TO ELIMINATE THIS BREAK AND FOLLOW THE CONTRACT.

(G.C. Exh. 3.) Schaefer sent a copy of this letter to Lawrence Milman, the Company's lawyer and chief labor negotiator (Tr. 33, 311). Despite the letter, the morning break was not eliminated; however, Schaefer was able to reduce the paid break to a maximum of 15 minutes, including the minute or so that it took employees to shut down their machines, and to stagger the first break so that production at the plant would not come to a complete stand still (Tr. 34–35, 79–80, 160).

With the 1992 contract set to expire at the end of 1997, the Respondent and the Union met for three days of negotiations in December 1997 (Tr. 92, 156). Peter Oliveri was the Union's chief negotiatior and he was joined by Charles Tolhurst, the Union's President, and Dennis Alexander (Tr. 71, 92, 155–156, 204). Milman was the Company's chief negotiator and he was joined by Peter Azzano, Steve Hill, and Bernard Lyman (Tr. 133). Oliveri considered the break issue as a "strike issue" (Tr. 205). Initially, the Union proposed that the Company grant two 10-minute breaks, one before lunch and one after lunch (G.C. Exh. 5). The Company, however, rejected this proposal. Then, the Union countered with a proposed 15-minute break in the first half of an employee's shift. Moreover, the Union wanted the Company to agree to this proposal in writing because they complained that management was improperly using breaks as a disciplinary tool at the plant (Tr. 97-98, 129-31, 156, 207, 338-39). The Company also rejected this proposal, voicing concern that they did not want to have breaks written into the contract, where employees at their other plants could see the provision (Tr. 99, 212).

According to Tolhurst and Oliveri, Milman then suggested that the 15-minute break be set forth in a side letter or a "separate sheet of paper" (Tr. 99, 210). Alexander opposed this side letter idea because he did not trust the Respondent (Tr. 158). But Oliveri told Alexander that side letters, not mentioned at all in a contract, were a "common practice" and the Union team agreed to the proposal (Tr. 100, 138, 211, 242, 244). Specifically, according to Tolhurst, Hill said "we'll give you your 15 minute break and we'll have it in writing" (Tr. 100, 135, 137). According to Alexander, Milman said that breaks would remain the same—i.e., a 15-minute break in the morning—and Milman indicated that Azzano and Lyman would draw up the side letter later (Tr. 101, 159, 173). Also, according to Oliveri, Milman said that the Company would provide for a break in a side letter (Tr. 210). According to Milman, though, the parties did not reach an oral agreement on the break issue. He testified that he told the Union team that the Company could not grant any breaks and that there would be no formal stopping of machines. Milman added, however, that an employee could continue to go to the bathroom, get a drink of water, or smoke if he was relieved by another employee or if the machine had otherwise stopped operating. Moreover, Milman testified that he agreed to give the Union only a letter memorializing or "clarifying" this existing policy. Thus, Milman stated that he never agreed to give a "side letter" agreeing to a break (Tr. 338–340, 363, 380–384). Indeed, Milman testified that it was the Union which requested the clarifying letter (Tr. 342). But Oliveri testified that the Company did not state that only a clarifying letter would be provided which would state that formal breaks would not be allowed (Tr. 220–221).

Of course, breaks were not the only issue in the contract negotiations. For example, the Union wanted employees to be able to take off on a Saturday before the start of a vacation on Monday. Milman stated that the Company would agree to this, but only in a side letter because he did not want the other Southern plants to find out (Tr. 105–106, 212, 353). At the conclusion of the negotiations, on December 12, 1997, everyone shook hands (Tr. 210, 343). Later that day, Tolhurst, Alexander, and Oliveri told the outcome of the negotiations to the union members, and explained that the Company agreed to put the 15-minute break and Saturday-off-before-vacations in writing in side letters to be provided (Tr. 102, 159–160, 222). The membership voted to approve the contract by just one vote (Tr. 111). Thereafter, Oliver signed the "Memorandum of Agreement" which was silent on the matter of breaks (G.C. Exh. 4; Tr. 206).

Later in December 1997, Tolhurst visited Azzano and Lyman to get the side letter on breaks, but he did not obtain it (Tr. 103–104). In January 1998, Oliveri called Milman about the side letter. Milman said that Southern's President, Steve Grossman, was very angry about the break matter and that Milman needed more time to address the matter (Tr. 213–214).

Also in January, the Union's Chief Steward, Charles Nowack, asked Lyman for the two side letters. Lyman said that he could not supply the side letter on breaks "because he would lose his job" (Tr. 190–191). But Lyman supplied the following memorandum to all employees on February 11, 1998:

> DURING THE CONTRACT NEGOTIATIONS THER WAS A REQUEST TO CHANGE TO LANGUAGE OF THIS SECTION OF THE LABOR AGREEMENT. ALTHOUGH THE LANGUAGE OF THIS ARTICLE WAS NOT CHANGED, THIS MEMO DETAILS THE METHOD IN WHICH THIS ARTICLE WILL BE ADMINISTERED.
>
> THE COMPANY AGREED THAT DURING THE TERM OF THE NEW CONTRACT IF AN EMPLOYEE INFORMS THE COMPANY (THROUGH HIS/HER SUPERVISOR) EARLY IN THE WEEK (MONDAY OR TUESDAY) PRIOR TO HIS/HER VACATION THAT THEY WOULD BE UNAVAILABLE FOR WORK, THE EMPLOYEE WOULD BE EXCUSED FROM WORK THE SATURDAY PRECEEDING THEIR VACATION WEEK.
>
> THERE WILL BE A FORM DISTRIBUTED FOR USE OF EMPLOYEES TO INFORM THE COMPANY OF THEIR AVAILABILITY ON THE SATURDAY PRECEEDING THEIR SCHEDULED VACATION.

(G.C. Exh. 6.) Also in February, Milman told James Ridgeway, the Union's international representative, that Milman was having problems with Grossman over the side letter (Tr. 245, 249). Still later in February, Azzano told Milman that the Union was seeking the side letter granting a 15-minute break. Milman also discovered a problem with the pension fund at this time, which was specifically addressed in the Memorandum of Agreement (Tr. 347). According to Oliveri, Milman said that the Company would accommodate the Union on the pension issue if the Union forgot about the side letter on breaks. Oliveri said no (Tr. 215–216). Milman denied linking these two matters (Tr. 348).

The Union never received a side letter granting a paid break to the employees (Tr. 140, 159, 252). Although Milman told Azzano and Lyman to draft the clarifying letter, none was drafted (Tr. 380–381, 385). Milman testified that Azzano told him that the letter was not drafted because the Union expected it to state that the Company was granting a 15-minute break (Tr. 386–387). Moreover, Milman felt that because of rising tensions at this point, no letter about breaks should be given to the Union (Tr. 348–349).

In March and April 1998, union officials met with Milman, Azzano, and Lyman to discuss exactly what the Company promised to provide in December 1997 (Tr. 271–272, 276). Milman told Ridgeway that he did not agree to provide a side letter providing the employees with a 15-minute break (Tr. 358). Moreover, Milman stated that employees could take breaks provided that the machines kept running (Tr. 305). And in May and June 1998, the parties met again, this time with a federal mediator, to discuss the break issue and other matters (Tr. 250-51, 359-61).

In mid-1998, Grossman visited the Camillus plant and observed that employees were taking breaks. Thus, he told Milman to end the Company's de facto break practice (Tr. 278, 286, 377–379). So, all breaks ceased in July 1998. As of then, if an employee needed to go to the bathroom, he shut down his machine. Employees can not sit in the break room or smoke, except during lunch (Tr. 85–86, 150–152, 364–365).

III. ANALYSIS

The central question in this case is whether during the December 1997 contract negotiations the Respondent's chief negotiator and legal counsel, Lawrence Milman, entered into an oral agreement—i.e., a meeting of the minds—with the Union to give the employees a 15-minute paid break during the first half of a work shift, which would be memorialized in a subsequent written "side letter." In the Presiding Judge's view, the overwhelming weight of the evidence compels the conclusion that this oral agreement was indeed reached on December 12, 1997, that the Respondent thereafter refused to put it in writing, and that the Respondent unilaterally revoked it in July 1998.

16. First, the Respondent's contention that the parties merely agreed that the Respondent would provide a "clarification letter" stating that there would continue to be no formal breaks at the Camillus plant is highly improbable. In short, it defies logic that the Union would fight so hard during the December 1997 negotiations and in the months thereafter to obtain a letter from Southern merely declining to provide a formal break. And further undermining this implausible argument is the Respondent's failure even to draft the "clarifying letter" after December 1997, illustrating the fact that no such letter was ever contemplated by the Respondent. Second, three credible union witnesses—Oliveri, Tolhurst, and Alexander—testified that Milman indeed promised to provide a side letter granting a paid 15-minute break. By contrast, only Milman denied that he made such a promise. However, Milman's testimony is belied by his concession that Company President Grossman became livid upon learning about the negotiations on the break issue. Moreover, the Respondent's failure to call the three other company negotiators to testify in this case warrants the adverse conclusion that they would also have backed up the Union's version. See *International Automated Machines*, 285 NLRB 1122 (1987). Third, the Respondent's provision of a side letter regarding the Saturday-before-vacation issue following the December 1997 negotiations adds credence to the contention that a similar letter would also have been provided but for the Respondent's reneging. Indeed, the Respondent agreed to provide both of these side letters on December 12, 1997 because it wanted to conceal the break and Saturday-before-vacation concessions from the employees at its other plants. Fourth, during the Union's attempt to obtain these side letters in January and February 1998, it is highly significant that neither Milman, Lyman, nor Azzano denied the fact that the Company promised in December 1997 to provide such a letter granting employees the 15-minute break. Moreover, Lyman told the Union's chief steward that he (Lyman) would lose his job if he supplied the side letter. In sum, irrespective of the Respondent's apparent subjective motive to snooker the Union into signing a collective-bargaining agreement with the promise of a later side letter on breaks,[5] the Presiding Judge concludes that an objective evaluation of the evidence warrants the conclusion that the parties in fact reached a binding agreement to provide a formal paid break to employees. See *Teamsters Local 287 (Reed & Graham)*, 272 NLRB 348, 351 (1984). Thus, it follows that the Respondent's subsequent refusal to provide a

[5] The court of appeals has held that "[a] per se violation of § 8(a)(5) may occur when a company misleads the union into believing that an agreement has been reached as to the terms of a collective bargaining contract and only formal execution remains. . . ." *NLRB v. Advanced Business Forms Corp.*, 474 F.2d 457, 465 (2d Cir. 1973).

written side letter memorializing that agreement violated Section 8(a)(1) and (5) of the Act. Accordingly, the Respondent will be required to reduce this oral agreement to writing and to sign it. *H.J. Heinz Co. v. NLRB*, 311 U.S. 514 (1941); *District 1199-C, National Union of Hospital & Health Care Employees*, 241 NLRB 270 (1979).

Further, the Respondent made matters worse in the summer of 1998 by eliminating the informal break practice at the Camillus plant. To justify this unilateral action, the Respondent claims that it simply reached an impasse with the Union over the issue following six months of good faith bargaining. While it is true that the parties were deadlocked over the break issue, and other issues, in the summer of 1998, the Presiding Judge rejects the Respondent's impasse defense because its bargaining history since December 1997 was founded in bad faith. See *NLRB v. Katz*, 369 U.S. 736 (1962). In short, Southern's July 1998 unilateral elimination of the de facto break practice constituted yet another violation of Section 8(a)(1) and (5).

IV. CONCLUSIONS OF LAW

1. The Respondent, Southern Container, Inc., is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, Paper Allied-Industrial, Chemical and Energy Workers International Union, Local 1430, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. As alleged in paragraphs 9 and 10 of the General Counsel's complaint, the Respondent violated Section 8(a)(1) and (5) of the Act by failing, since December 12, 1997, to provide a side letter reducing to writing the oral terms of the agreement reached regarding a paid break to employees, and also by unilaterally eliminating its de facto practice regarding breaks on July 13, 1998.

4. The unfair labor practice of the Respondent, set forth in paragraph 3, above, affects commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]